

NH State Government Energy Committee (SGEC)
Proposed Potential Legislative Language
July 30, 2019

Overview

- Potential legislative changes identified to support further reduction in the State's fossil-fuel-energy use as part of the state's lead-by-example efforts.
- Potential for 2020 legislative session to be divide into three bills to support their passage by keeping complex and unrelated elements of law separate.
- **Subject to Review and Approval by SGEC.**

Introduction

In Executive Order 2016-03,¹ fossil-use-energy use reduction targets were established that built on a decade of progress lowering overall energy costs, while reducing total and fossil-fuel energy consumption, and contributing to the improvement of the state's environmental quality. These targets are to reduce aggregate fossil-fuel energy-use intensity across all its buildings as compared to a 2005 baseline by:

- 30 percent by 2020;
- 40 percent by 2025; and
- 50 percent by 2030.

These targets expand on a statutory target established by SB 73 (2010 Session) that create RSA 21-I:14-c,² which require that

“Each state department shall identify cost-effective measures to reduce fossil fuel consumption by 25 percent by 2025 in state buildings, on a square foot basis, compared to a 2005 baseline. Implementation of any measures shall be subject to the appropriate budgetary process and approval. Cost effectiveness for the purposes of this section shall mean a return on investment based on energy savings and reduced operational costs within the expected lifetime of the measure.”

State staff, working in support of the SGEC, identified several statutes in the RSA's dedicated to the Department of Administrative Services that, if amended, could expand and clarify the opportunities to continue to make progress toward those goals, while also increasing funding that could be used for additional energy cost savings projects.

The language to date has been reviewed by the SGEC at their June 2019 meeting and will be revisited at a follow-up meeting in August. Should the SGEC approve some or all of the proposed legislative changes, the SGEC and staff will, in coordination with OSI and Governor's Office, seek bill sponsors.

¹ <https://www.nh.gov/osi/energy/programs/documents/nh-executive-order-2016-03.pdf>

² <http://www.gencourt.state.nh.us/rsa/html/I/21-I/21-I-14-c.htm>

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Summary of Proposed Changes

Potential Bill 1: Update Definitions and Clarify Opportunities

1. RSA 21-I:19-a Energy Efficient Measures; State Policy.

Summary of Changes:

- Updates the existing section, Energy Efficient Measures; State Policy, to include a broader range of measures that state energy staff may pursue in order to reduce overall energy costs and meet state energy goals.
- Updates the language to emphasize the use of life cycle costs in building and leasing decisions.

New Terms Added:

- Strategic electrification
- Fuel switching
- Combined heat and power
- Energy Storage
- Renewable energy

2. RSA 21-I:19-b Definitions.

Summary of Changes:

- Updates the definitions applicable to the State's energy management efforts. Changes are made in keeping with other potential changes to the state energy management statutes in an effort to enhance the State's efforts to reduce its overall energy costs and meet state energy goals.

New Section:

III: Energy Storage

V: Power Purchase Agreement (PPA)

X. Strategic electrification

XI. Fuel switching

XI. Combined heat and power (CHP)

3. RSA 21-I:19-d Energy Performance Contracting.

Summary of Changes:

- Updates the existing section, Energy Performance Contracting, to include a broader range of measures that state energy staff may pursue in order to reduce overall energy costs and meet state energy goals.
- Clarifies the eligibility of power purchase agreements to be qualified mechanisms.

New Terms Added:

- Strategic electrification
- Fuel switching
- Combined heat and power
- Energy Storage
- Power purchase agreement
- Renewable energy

Potential Bill 2: Clarify Statutory Obligation

4. RSA 21-I:17-b Purchase of Electricity by Competitive Bidding.

Summary of Changes:

- Clarifies that this statute only applies to Power Purchase Agreements for energy purchased through wholesale energy providers, and does not include purchase agreements as defined in RSA 21-I:19-b Definitions and as enabled by 21-I:19-d Energy Performance Contracting.

New Section:

III. This solicitation of bids for electric power supply shall not [...]

Potential Bill 3: Expanding Energy Project Funding

5. RSA 21-I:19-f Energy Fund.

Summary of Changes:

- Proposes changes that would allow the State's Energy Fund to accept additional revenue sources and expend those funds on additional energy cost saving projects and/or Renewable Energy Certificates (RECs).

New Funding Stream Added:

- Sale of RECs

Potential Bill 1: Update Definitions and Clarify Opportunities

1. RSA 21-I:19-a Energy Efficient Measures; State Policy.

Summary of Changes:

- I. Updates the existing section, Energy Efficient Measures; State Policy, to include a broader range of measures that state energy staff may pursue in order to reduce overall energy costs and meet state energy goals.
- II. Updates the language to emphasize the use of life cycle costs in building and leasing decisions.

Explanation: New matter added appears in ***bold italics***.

Matter removed appears ~~in brackets and struck through.~~

State Facility Energy Cost Reduction

RSA 21-I:19-a Energy Efficient Measures; State Policy.

Amend [Section 21-I:19-a](#) to read as follows:

21-I:19-a Energy ~~[Efficient]~~ Management Measures; State Policy.

I. It shall be the policy of the [s]State of New Hampshire to ***prioritize public health and environmental quality, while maximizing economic benefits, through*** ~~[maximize]~~ the use of economical ***energy measures including, but not limited to energy conservation,*** energy efficiency~~[t]~~, ***strategic electrification, fuel switching, combined heat and power, renewable energy*** ~~[measures]~~, ***and energy storage*** in the construction, renovation, and maintenance of buildings owned or leased by the state. Further, it shall be the policy of the state to encourage municipalities to incorporate such measures into their buildings to the greatest extent possible.

II. The department of administrative services shall consider ***energy measures including, but not limited to energy conservation,*** energy efficiency, ***strategic electrification, fuel switching, combined heat and power, renewable energy, and energy storage*** and the ***energy*** life-cycle ***costs*** ~~[costing of energy cost saving measures a]~~ as significant ***criteria*** ~~[criterion]~~ in its ***building construction, and*** purchasing and leasing decisions.

Effective Date. This act shall take effect 60 days after its passage.

Potential Bill 1: Update Definitions and Clarify Opportunities

2. RSA 21-I:19-b Definitions.

Summary of Changes:

- I. Updates the definitions applicable to the State's energy management efforts. Changes are made in keeping with other potential changes to the state energy management statutes in an effort to enhance the State's efforts to reduce its overall energy costs and meet state energy goals.

Explanation: New matter added appears in ***bold italics***.

Matter removed appears [~~in brackets and struck through.~~]

State Facility Energy Cost Reduction

RSA 21-I:19-b Definitions.

Amend Section 21-I:19-b to read as follows:

In this subdivision:

I. "Energy cost saving measure" means any construction, improvement, repair, alteration, or betterment of any building or facility or any equipment, fixture, or furnishing to be added to or used in any building or facility that will be a cost effective energy-related project. This shall include any project that will lower energy or utility costs in connection with the operation or maintenance of such building or facility and will achieve energy cost savings sufficient to recover any project costs or incurred debt service within 20 years from the date of project implementation.

II. "Energy performance contract" means an agreement for the provision of energy services or equipment or both. This shall include, but shall not be limited to, energy conservation-enhancing projects in buildings and alternate energy technologies, in which a private sector person or company agrees to finance, design, construct, install, maintain, operate, or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a state government agency or facility in exchange for a portion of the energy cost savings or specified revenues. The level of payments made would be contingent upon measured energy cost savings or energy production.

III. ***"Energy storage" refers to batteries, flywheels, compressed air energy systems, sensible heat storage or any other technology, system, or device capable of capturing energy produced at one point in time and storing it as some contained form of energy that the technology, system, or device can release at a later time. Such term shall include standalone technologies, systems, and devices, as well as those co-located with or incorporated into a renewable energy source.***

IV. "Positive cash flow financing" means an agreement among an agency, a capital leasing firm, and a provider of design/build energy management services under which the leasing cost of the project, including all interest payments, is equal to or less than the energy cost the project avoids.

V. ***"Power purchase agreement (PPA)" means a competitively-bid agreement under which a developer arranges for the design, permitting, upfront capital and financing, installation, operation, and maintenance of a combined heat and power or renewable energy system (e.g., electric, thermal) on a***

Potential Bill 1: Update Definitions and Clarify Opportunities

host customer's property. The host customer agrees to purchase the system's energy output from the developer at an agreed upon price for a set time period.

[IV-] **VI.** "Shared-savings contract" means an agreement under which a private sector person or company undertakes to design, implement, install, operate, and maintain improvements to the agency's or municipality's procedures, equipment or facilities, and the agency or municipality agrees to pay a contractually specified amount of measured or estimated energy cost savings.

[V-] **VII.** "Date of project implementation" means the expected date established in the energy performance contract that the construction, improvement, repair, alteration, or betterment is to be completed and become operational. If the energy performance contract includes more than one energy cost saving measure, the "date of project implementation" may be alternatively defined by the contracting state agency or municipality to be the date that the last of the energy cost saving measures is expected to become operational.

[VI-] **VIII.** "Demand response program" means a program under which the state receives payment for voluntarily reducing electricity demand in response to grid instability as dictated by the regional independent system operator or in response to high wholesale electricity prices.

[VII-] **IX.** "Renewable energy," for the purposes of this section, means wind energy; biomass energy; geothermal energy, if the geothermal energy output is in the form of useful thermal energy; hydrogen derived from biomass fuels or methane gas; ocean thermal, wave, current, or tidal energy; methane gas; solar thermal or electric energy; or hydropower.

X. "Strategic electrification" refers to the replacement of combustion technologies, which utilize primary fuels (e.g., biomass, oil, natural gas), to electric-powered measures in order to reduce energy costs, improve energy factor, reduce energy consumption, or lower greenhouse gas emissions.

XI. "Fuel switching" means replacing an end-use technology (such as a heating system) with one that uses a different energy source (direct or indirect) in order to reduce energy costs, improve energy factor, reduce energy consumption, or lower greenhouse gas emissions.

X?. "Combined heat and power (CHP)," also known as cogeneration, refers, for the purposes of this section, to the simultaneous production of electricity and useful thermal energy (e.g., heating and cooling) from a single fuel source.

Effective Date. This act shall take effect 60 days after its passage.

Potential Bill 1: Update Definitions and Clarify Opportunities

3. RSA 21-I:19-d Energy Performance Contracting.

Summary of Changes:

- I. Updates the existing section, Energy Performance Contracting, to include a broader range of measures that state energy staff may pursue in order to reduce overall energy costs and meet state energy goals.
- II. Clarifies the eligibility of power purchase agreements to be eligible mechanisms.

Explanation: New matter added appears in ***bold italics***.

Matter removed appears [~~in brackets and struck through.~~]

State Facility Energy Cost Reduction

RSA 21-I:19-d Energy Performance Contracting.

Amend [Section 21-I:19-d](#) to read as follows:

- I. Any state agency or municipality may enter into a ***competitively-bid*** energy performance contract for the purpose of undertaking or implementing ***energy measures including, but not limited to*** energy conservation, ***energy efficiency, strategic electrification, fuel-switching, combined heat and power***, or ~~[alternate]~~ ***renewable*** energy ~~[measures]~~, ***and energy storage*** in a facility. An energy performance contract may include, but shall not be limited to, options such as joint ventures, shared-savings contracts, positive cash flow financing, ~~[or]~~ energy service contracts, ***power purchase agreements***, or any combination thereof, provided that at the conclusion of the contract the agency will receive title to the energy system being financed, if the agency so desires.
- II. Notwithstanding any law to the contrary relating to the award of public contracts, any agency desiring to enter into an energy performance contract shall do so in accordance with usual contracting procedures and the following provisions:
 - (a) The agency shall issue a public request for proposals, advertised in the same manner as other programs, concerning the provision of energy efficiency services or the design, installation, operation, and maintenance of energy equipment, or both. The request for proposals shall contain terms and conditions relating to submission of proposals, evaluation and selection of proposals, financial terms, legal responsibilities, and other matters as may be required by law and as the agency determines appropriate.
 - (b) Upon receiving responses to the request for proposals, the agency may select the most qualified proposal or proposals on the basis of the experience and qualifications of the proposals, the technical approach, the financial arrangements, the overall benefits to the agency, and other factors determined by the agency to be relevant and appropriate.
 - (c) Upon the approval by the ~~[IEEC and]~~ governor and council, the agency may enter into an energy performance contract with the person or company whose proposal is selected as the most qualified based on the criteria established by the agency.

Potential Bill 1: Update Definitions and Clarify Opportunities

(d) The term of any energy performance contract entered into pursuant to this section shall not exceed 20 years from the date of project implementation.

(e) Any contract entered into shall contain the following annual allocation dependency clause: "The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the applicable funding authority. If that authority fails to appropriate sufficient funds to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which allocations were made."

(f) Any energy performance contract **shall** ~~should~~ require ~~[the contractor to include all energy efficiency improvement in selected buildings that are calculated to]~~ **the recovery of all *implementation* costs** within 20 years from the date of project implementation at existing energy prices. The contract shall require that the public utility or energy services provider be repaid only to the extent of energy cost savings guaranteed by the contractor to accrue over the term of the contract.

Effective Date. This act shall take effect 60 days after its passage.

4. RSA 21-I:17-b Purchase of Electricity by Competitive Bidding.

Summary of Changes:

- I. Clarifies that this statute only applies to Power Purchase Agreements for energy purchased through wholesale energy providers and does not include purchase agreements as defined in RSA 21-I:19-b Definitions and as enabled by 21-I:19-d Energy Performance Contracting.

Explanation: New matter added appears in ***bold italics***.

Matter removed appears [~~in brackets and struck through.~~]

Purchase of Supplies

Amend [RSA 21-I:17-b](#) to read as follows:

21-I:17-b Purchase of Electricity by Competitive Bidding.

I. When evaluating bids for electric power supply and services, the quality of service, the reliability of service, the coordination of services, and other reasonable factors shall be considered in addition to the price of electricity. The bidding process shall be open to bids which serve less than the entire needs of the state, or which provide electric power supply or services separately, in order to increase the number of potential suppliers.

II. When submitting electric power supply bids, vendors should include information, to the extent practicable, on the fuel sources and air pollutant emission profiles of significant sources of generation under the proposed bid.

III. This solicitation of competitive-bids for electric power supply shall only apply to whole-sale power purchased from the electric grid and does not apply to Power Purchase Agreements, as defined in RSA 21-I:19-b Definitions and as enabled by 21-I:19-d Energy Performance Contracting, which will result in power generated on state owned land. No part shall be interpreted to mean that any energy contract entered into under RSA 21-I:19-d shall not be competitively bid as defined by RSA 21-I:81.

Effective Date. This act shall take effect 60 days after its passage.

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6. RSA 21-I:19-f Energy Fund.

Summary of Changes:

- I. Portion of remaining savings from energy-cost operating budgets revert to state energy investment fund at end of biennium; and
- II. Sale of Renewable Energy Certificate

Explanation: New matter added appears in ***bold italics***.

Matter removed appears [~~in brackets and struck through.~~]

Amend [RSA 21-I:19-f](#) to read as follows:

Section 21-I:19-f

21-I:19-f State Energy Investment Fund. – There is hereby established an energy fund into which shall ~~[only]~~ be deposited moneys received by the state for participating in demand response, ~~[or]~~ utility or public utility commission programs, ~~[or both]~~ ***or obtained through the sale of Renewable Energy Certificates, as defined by RSA 362-F:6, for state-owned renewable thermal and electricity projects.*** The state treasurer may invest moneys in the fund as provided by law, with interest received on such investment credited to the fund. Moneys in the fund shall be non-lapsing and continually appropriated to the division of plant and property to be used exclusively to fund energy efficiency or renewable energy projects and energy efficiency or renewable energy contracts; to reimburse the department of administrative services, division of public works design and construction, for costs of providing construction administration services including, but not limited to, design and oversight of design and construction of energy saving or renewable energy measures; and to reimburse state agencies for demand response program expenses or completing energy saving or renewable energy measures.

Effective Date. This act shall take effect 60 days after its passage.